IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4571 OF 2005

Shri Kanayalal Chetandas Jaisinghani ..Petitioner.

Versus

Chuharlal Chetandas Jaisinghani & Anr. ..Respondent.

Mr. K.C. Jaisinghani, the Petitioner -in- person.

CORAM : S. A. BOBDE, J.

DATED : 14TH JULY, 2005.

P.C.:

1. The petitioner has challenged three orders. The petitioner is the defendant No.1 in a suit filed by the Respondent No.1. The suit filed by the respondent- plaintiff is for a declaration that the plaintiff is the owner of flat No.2 constructed upon open plot No. 55-A in Pimpri and further for specific performance against the defendant No.1 to execute the conveyance deed as per the agreement of sale dated 12.05.1983.

2. The first order challenged by the petitioner is really not an order which decides any right of the petitioner. The petitioner submitted notes of arguments at Exh. 767. The trial court heard both the sides and has observed that these are the points which involves appreciation of evidence on record which will be done at the time of final judgment. I see no infirmity, jurisdictional or otherwise in the order, particularly when the trial court has observed that the witnesses are still being examined.

3. The second order challenged by the petitioner is the order dated 23rd June, 2005 passed below Exh. 801, in which the trial court has issued summons to Smt. Rekha Jaisinghani, the petitioner's wife. The petitioner submitted that a witness summons cannot be issued since the evidence can only be recorded by affidavit and the trial court has committed an error in holding that Smt.Rekha Jaisinghani, will have to depose in the court. Having perused the order, I find that there is no such observation by the trial court. The trial court has only said that unless witness summons is issued and the witness is present in the court, the plaintiff would not be in a position to

examine her in the aforesaid manner either by filing her affidavit of evidence or any other mode. There is no reason to presume at this stage that the trial court will not record the evidence in accordance with the Order 18, Rule 4 of the Code of the Civil Procedure. Hence, there is no merit in the challenge to this order also.

4. The third order challenged by the petitioner is the grant of time to him till 11.7.2005 to challenge the order below Exh. 801. It is difficult to understand why the petitioner has challenged this order also.

5. There is no merit in the petition. It is hereby dismissed.

14.07.2005 (S.A.BOBDE,J.)